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FILED

08 MAR 11 PM 2:42

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DEPUTY

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

KAREL SPIKES,

Plaintiff,

vs.

SPARKY'S TRANSMISSION, INC.; CHRIS
BOEVREE TRUST (02-14-91) and DOES 1
THROUGH 10, Inclusive,
Defendants.

Case No.:

08 CV 453

JLS(JMA)

CIVIL COMPLAINT

DEMAND FOR JURY TRIAL
[F.R.C.P. §38(b);
Local Rule 38.1]

Plaintiff, KAREL SPIKES (hereinafter referred to as
"Plaintiff"), file this cause of action against Defendants
SPARKY'S TRANSMISSION, INC. (hereinafter "SPARKY'S
TRANSMISSION"), CHRIS BOEVREE TRUST (02-14-91) and DOES 1
THROUGH 10, Inclusive, and would show unto the Court the
following:

I.

JURISDICTION AND VENUE

1. This Court has original jurisdiction of this civil
action pursuant to 28 USC §1331, 28 USC §§1343(a)(3) and
1343(a)(4) for claims arising under the Americans with
Disabilities Act of 1990, 42 USC §12101 et seq. and the Court's

CR

1 supplemental jurisdiction, 28 USC §1367.

2 2. Venue in this Court is proper pursuant to 28 USC
3 §§1391(b) and (c).

4 3. Pursuant to 28 USC §1367(a), Plaintiff shall assert
5 all causes of action based on state law, as plead in this
6 complaint, under the supplemental jurisdiction of the federal
7 court. All the causes of action based on federal law and those
8 based on state law, as herein stated, arose from a common nuclei
9 of operative fact. That is, Plaintiff was denied equal access
10 to Defendants' facilities, goods, and/or services in violation
11 of both federal and state laws and/or was injured due to
12 violations of federal and state access laws. The state actions
13 of Plaintiff are so related to the federal actions that they
14 form part of the same case or controversy. The actions would
15 ordinarily be expected to be tried in one judicial proceeding.

16 **II.**

17 **THE PARTIES**

18 4. Defendant SPARKY'S TRANSMISSION is, and at all times
19 mentioned herein was, a business or corporation or franchise
20 organized and existing and/or doing business under the laws of
21 the State of California. SPARKY'S TRANSMISSION is located at
22 8861 La Mesa Boulevard, La Mesa, CA (hereinafter "the subject
23 property".) Plaintiff is informed and believes and thereon
24 alleges that Defendant SPARKY'S TRANSMISSION is, and at all
25 times mentioned herein was, the owner, lessor or lessee of the
26 subject property and/or the owner and/or operator of the public
27 accommodation located at the subject property.

28 5. Defendant CHRIS BOEVREE TRUST (02-14-91) is, and at all

1 times mentioned herein was, a Trust organized, created and/or
2 existing in and/or doing business under the laws of the State of
3 California. Plaintiff is informed and believes and thereon
4 alleges that Defendant CHRIS BOEVREE TRUST (02-14-91) is, and at
5 all times mentioned herein was, the owner, lessor or lessee of
6 the subject property.

7 6. Plaintiff is informed and believes, and thereon
8 alleges, that Defendants and each of them herein were, at all
9 times relevant to the action, the owners, franchisees, lessees,
10 general partners, limited partners, agents, employees,
11 employers, representing partners, subsidiaries, parent
12 companies, joint venturers and/or divisions of the remaining
13 Defendants and were acting within the course and scope of that
14 relationship. Plaintiff is further informed and believes, and
15 thereon alleges, that each of the Defendants herein gave
16 consent to, ratified, and/or authorized the acts alleged herein
17 of each of the remaining Defendants.

18 7. Plaintiff is an otherwise qualified disabled
19 individual as provided in the Americans with Disabilities Act
20 of 1990, 42 USC §12102, Part 5.5 of the California Health &
21 Safety Code and the California Unruh Civil Rights Act, §§51, et
22 seq., 52, et seq., the California Disabled Persons Act, §§54,
23 et seq., and other statutory measures which refer to the
24 protection of the rights of "physically disabled persons."
25 Plaintiff visited the public accommodation owned and/or
26 operated by Defendants and/or located at the subject property
27 for the purpose of availing himself of the goods, services,
28 facilities, privileges, advantages, or accommodations operated

1 and/or owned by Defendants and/or located on the subject
2 property.

3 8. Plaintiff is informed and believes and thereon alleges
4 that the subject facility has been newly constructed and/or
5 underwent remodeling, repairs, or alterations since 1971, and
6 that Defendants have failed to comply with California access
7 standards which applied at the time of each such new
8 construction and/or alteration.

9 **III.**

10 **FACTS**

11 9. Plaintiff has a mobility impairment and uses a
12 wheelchair. Moreover, he has had a history of or has been
13 classified as having a physical impairment, as required by 42
14 USC §12102(2)(A).

15 10. On or about July 10, 2007 and continuing through the
16 present date, Plaintiff was denied full and equal access to the
17 facilities owned and/or operated by the Defendants because the
18 facility and/or subject property were inaccessible to members
19 of the disabled community who use wheelchairs for mobility.
20 Plaintiff was denied full and equal access to portions of the
21 property because of barriers which included, but are not
22 limited to, inaccessible path of travel, inaccessible cashier
23 counter, inaccessible restroom facilities and lack of an
24 accessible parking space, as well as lack of signage for said
25 space. Plaintiff was also denied full and equal access because
26 of discriminatory policies and practices regarding
27 accommodating people with disabilities. Plaintiff filed this
28 lawsuit to compel compliance with access laws and regulations.

1 11. As a result of Defendants' failure to remove
2 architectural barriers, Plaintiff suffered injuries. People
3 with disabilities, because of the existing barriers, are denied
4 full and equal access to the Defendants' facilities. The ADA
5 has been in effect for more than 16 years. Given the vast
6 availability of information about ADA obligations, including
7 FREE documents which are available from the U.S. Department of
8 Justice by calling (800) 514-0301 or at the following web
9 sites: www.sba.gov/ada/smbusgd.pdf, www.ada.gov/taxpack.pdf and
10 www.usdoj.gov/crt/ada, the failure of Defendants to comply with
11 their barrier removal obligations is contemptible.

12 12. Plaintiff is an otherwise qualified individual as
13 provided in the Americans with Disabilities Act of 1990, 42 USC
14 §12102, the Rehabilitation Act of 1973, Section 504 (as amended
15 29 USC §794) and the California Unruh Civil Rights Act, Civil
16 Code §§51, 52, 54.1, and 54.3, and other statutory measures
17 which refer to the protection of the rights of "physically
18 disabled persons." Plaintiff visited the public facilities
19 owned and operated by Defendants for the purpose of availing
20 himself of the goods and services offered and provided by
21 Defendants and/or for the purpose of obtaining removal of
22 architectural barriers and/or modification of policies,
23 practices and procedures to provide accessibility to people
24 with disabilities. Plaintiff was injured in fact, as set forth
25 more specifically herein.

26 13. Plaintiff alleges that Defendants will continue to
27 operate public accommodations which are inaccessible to him and
28 to other individuals with disabilities. Pursuant to 42 USC

1 §12188(a), Defendants are required to remove architectural
2 barriers to their existing facilities.

3 14. Plaintiff has no adequate remedy at law for the
4 injuries currently being suffered in that money damages will
5 not adequately compensate Plaintiff for the amount of harm
6 suffered as a result of exclusion from participation in the
7 economic and social life of this state.

8 15. Plaintiff believes that architectural barriers
9 precluding Plaintiff full and equal access of the public
10 accommodation will continue to exist at Plaintiff's future
11 visits, which will result in future discrimination of
12 Plaintiff, in violation of the Americans with Disabilities Act.
13 Plaintiff is currently being subjected to discrimination
14 because Plaintiff cannot make use of and obtain full and equal
15 access to the facilities, goods and/or services offered by
16 Defendants to the general public. Plaintiff seeks damages for
17 each offense relating to each of Plaintiff's visits to the
18 subject property when Plaintiff was denied full and equal
19 access to the subject property or was deterred from attempting
20 to avail himself of the benefits, goods, services, privileges
21 and advantages of the place of public accommodation at the
22 subject property because of continuing barriers to full and
23 equal access.

24 IV.

25 FIRST CLAIM FOR
26 VIOLATION OF AMERICAN WITH DISABILITIES ACT
42 USC §12101, et seq.

27 16. Plaintiff re-alleges and incorporates by reference
28 each and every allegation contained in paragraphs 1 through 15,

1 inclusive, as though set forth fully herein.

2 17. Plaintiff was denied full and equal access to
3 Defendants' goods, services, facilities, privileges,
4 advantages, or accommodations within a public accommodation
5 owned, leased and/or operated by Defendants, in violation of 42
6 USC §12182(a). Plaintiff was, therefore, subjected to
7 discrimination and is entitled to injunctive relief pursuant to
8 42 USC §12188 as a result of the actions or inaction of
9 Defendants.

10 18. Among other remedies, Plaintiff seeks an injunctive
11 order requiring compliance with state and federal access laws
12 for all access violations which exist at the property,
13 requiring removal of architectural barriers and other relief as
14 the court may deem proper. Plaintiff also seeks any other
15 order that will redress the discrimination to which he has been
16 subjected, is being subjected and/or will be subjected.

17 V.

18 **SECOND CLAIM FOR**
19 **VIOLATION OF CALIFORNIA CIVIL CODE**

20 19. Plaintiff re-alleges and incorporates by reference
21 each and every allegation contained in paragraphs 1 through 18,
22 inclusive, as though set forth fully herein.

23 20. Based on the facts plead hereinabove and elsewhere in
24 this complaint, Defendants did, and continue to, discriminate
25 against Plaintiff and persons similarly situated by denying
26 disabled persons full and equal access to and enjoyment of the
27 subject facilities and of Defendants' goods, services,
28 facilities, privileges, advantages or accommodations within a

1 public accommodation, in violation of California Civil Code
2 §§51, et seq., 52, et seq., and 54, et seq.

3 21. Defendants' actions constitute a violation of
4 Plaintiff's rights under California Civil Code §§51, et seq.,
5 52, et seq., and 54, et seq. and therefore Plaintiff is
6 entitled to injunctive relief remedying all such violations of
7 California access laws and standards. In addition, Plaintiff
8 is entitled to damages under California Civil Code §54.3 for
9 each offense. The amount of damages suffered by Plaintiff is
10 not yet determined. When the amount is ascertained, Plaintiff
11 will ask the Court for leave to amend this complaint to reflect
12 this amount. Plaintiff is also entitled to and requests
13 attorneys' fees and costs.

14 22. The actions of Defendants were and are in violation of
15 the Unruh Civil Rights Act, California Civil Code §§51, et seq.
16 and therefore Plaintiff is entitled to injunctive relief
17 remedying all such violations of California access laws and
18 standards. In addition, Plaintiff is entitled to damages under
19 California Civil Code §52 for each offense. The amount of
20 damages suffered by Plaintiff is not yet determined. When the
21 amount is ascertained, Plaintiff will ask the Court for leave
22 to amend this complaint to reflect this amount.

23 23. Plaintiff seeks all of the relief available to him
24 under Civil Code §§51, 52 et seq., 54, 54.1, 54.2, 54.3, and
25 any other Civil Code Sections which provide relief for the
26 discrimination suffered by Plaintiff, including damages and
27 attorneys fees.

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2 VI.

3 THIRD CLAIM FOR
4 VIOLATION OF HEALTH AND
5 SAFETY CODE §19950, ET SEQ.

6 24. Plaintiff re-alleges and incorporates by reference
7 each and every allegation contained in paragraphs 1 through 23,
8 inclusive, as though set forth fully herein.

9 25. Defendants' facilities are public accommodations
10 within the meaning of Health and Safety Code §19950, et seq.,
11 and Plaintiff is informed and believes and thereon alleges that
12 Defendants have newly built or altered the subject property
13 and/or the subject facility since 1971 within the meaning of
14 California Health and Safety Code §19959. The aforementioned
15 acts and omissions of Defendants constitute a denial of equal
16 access to the use and enjoyment of the Defendants' facilities
17 by people with disabilities.

18 26. Defendants' failure to fulfill their duties to provide
19 full and equal access to their facilities by people with
20 disabilities has caused Plaintiff to suffer deprivation of
21 Plaintiff's civil rights, as well as other injuries.

22 27. As a result of Defendants' violations of Health and
23 Safety Code §§19955, et seq., described herein, Plaintiff is
24 entitled to and requests injunctive relief pursuant to Health
25 and Safety Code §§19953, and to reasonable attorney's fees and
26 costs.

27 VII.

28 FOURTH CLAIM FOR DECLARATORY RELIEF

29 28. Plaintiff re-alleges and incorporates by reference

1 each and every allegation contained in paragraphs 1 through 27,
2 inclusive, as though set forth fully herein.

3 29. An actual controversy now exists in that Plaintiff is
4 informed and believes and thereon alleges that Defendants'
5 premises are in violation of the disabled access laws of the
6 State of California including, but not limited to, Civil Code
7 §§51, et seq., §§52, et seq., §§54, et seq., Health and Safety
8 Code §§19950, et seq., Government Code §§4450, et seq. and
9 7250, et seq., Title 24 of the California Code of Regulations,
10 and/or Title III of the Americans with Disabilities Act and its
11 implementing Accessibility Regulations.

12 30. A declaratory judgment is necessary and appropriate at
13 this time so that each of the parties may know their respective
14 rights and duties and act accordingly.

15 **VIII.**

16 **FIFTH CLAIM FOR INJUNCTIVE RELIEF**

17 31. Plaintiff re-alleges and incorporates by reference
18 each and every allegation contained in paragraphs 1 through 30,
19 inclusive, as though set forth fully herein.

20 32. Plaintiff will suffer irreparable harm unless
21 Defendants are ordered to remove architectural barriers at
22 Defendants' public accommodation, and/or to modify their
23 policies and practices regarding accommodating people with
24 disabilities. Plaintiff has no adequate remedy at law to
25 redress the discriminatory conduct of Defendants.

26 33. Plaintiff seeks injunctive relief to redress
27 Plaintiff's injuries.

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3 IX.

4 JURY DEMAND

5 34. Pursuant to Rule 38 of the Federal Rules of Civil
6 Procedure, Plaintiffs hereby request a jury trial.

7 WHEREFORE, Plaintiff prays for judgment against the
8 Defendants, SPARKY'S TRANSMISSION, INC., CHRIS BOEVREE TRUST
9 (02-14-91) and DOES 1 through 10, as follows:

- 10 1. For injunctive relief, compelling Defendants to comply
11 with the Americans with Disabilities Act, the Unruh
12 Civil Rights Act and the Disabled Persons Act. Note:
13 the plaintiff is not invoking section 55 of the
14 California Civil Code and is not seeking injunctive
15 relief under that section;
- 16 2. That the Court declare the respective rights and
17 duties of Plaintiff and Defendants as to the removal
18 of architectural barriers at Defendants' public
19 accommodations;
- 20 3. An order awarding Plaintiff actual, special and/or
21 statutory damages for violation of his civil rights
22 and for restitution including, but not limited to,
23 damages pursuant to the applicable Civil Code Sections
24 including, but not limited to, §§52 and 54.3 for each
25 and every offense of Civil Code §§51 and 54;
- 26 4. An award of compensatory damages according to proof;
- 27 5. An award of up to three times the amount of
28 actual damages pursuant to the Unruh Civil

1 Rights Act and the Disabled Persons Act; and

2 6. An order awarding Plaintiff reasonable attorneys' fees
3 and costs;

4 7. Such other and further relief as the Court deems
5 proper.

6 DATED:

3/7/08

LAW OFFICES OF AMY B. VANDEVELD

7
8 
9 AMY B. VANDEVELD,
Attorney for Plaintiff

**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

**# 148665 - SH
* * C O P Y * *
March 11, 2008
14:45:49**

Civ Fil Non-Pris

USAO #: 08CV0453
Judge.: JANIS L. SAMMARTINO
Amount.: \$350.00 CK
Check#: BC3355

Total-> \$350.00

FROM: APIKES V. SPARKY'S TRANSMISSIO

JS44

(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

KAREL SPIRES,

SPARKY'S TRANSMISSION, INC.;

DEFENDANTS CHRIS BOEVREE TRUST (02-14-91)

and DOES 1 THROUGH 10,

Inclusive, 08 MAR 11 PM 2:41 JMA

San Diego

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
(EXCEPT IN U.S. PLAINTIFF CASES)

San Diego

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY)
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED
R.V. DEPUTY

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Amy B. Vandeveld, Esq.
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1850 Fifth Avenue, Suite 22
San Diego, CA 92101 (619) 231-8883

ATTORNEYS (IF KNOWN)

08 CV 453

JLS (JMA)

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff ☒ Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant • 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT (For Diversity Cases Only))

	PT	DEF		PT	DEF
Citizen of This State	• 1	• 1	Incorporated or Principal Place of Business in This State	• 4	• 4
Citizen of Another State	• 2	• 2	Incorporated and Principal Place of Business in Another State	• 5	• 5
Citizen or Subject of a Foreign Country	• 3	• 3	Foreign Nation	• 6	• 6

IV. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

42 U.S.C. Sections 12101-12111, 11281-12184 and 12201 et. seq.

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment & Enforcement of Judgment 151 Medicare Act 152 Recovery of Defaulted Student Loans (Excl. Veterans) 153 Recovery of Overpayment of Veterans Benefits 160 Stockholders Suits 190 Other Contract 195 Contract Product Liability	PERSONAL INJURY 310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander 330 Federal Employers' Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle 355 Motor Vehicle Product Liability 360 Other Personal Injury CIVIL RIGHTS 441 Voting 442 Employment 443 Housing/Accommodations 444 Welfare 440 Other Civil Rights	610 Agriculture 620 Other Food & Drug 625 Drug Related Seizure of Property 21 USC 881 630 Liquor Laws 640 RR & Truck 650 Airline Regs 660 Occupational Safety/Health 690 Other LABOR 710 Fair Labor Standards Act 720 Labor/Mgmt. Relations 730 Labor/Mgmt. Reporting & Disclosure Act 740 Railway Labor Act 790 Other Labor Litigation 791 Empl. Ret. Inc. Security Act	422 Appeal 28 USC 158 423 Withdrawal 28 USC 157 PROPERTY RIGHTS 820 Copyrights 830 Patent 840 Trademark SOCIAL SECURITY 861 HIA (13958) 862 Black Lung (923) 863 DIWC/DIWW (405(g)) 864 SSID Title XVI 865 RSI (405(e)) FEDERAL TAX SUITS 870 Taxes (U.S. Plaintiff or Defendant) 871 IRS - Third Party 26 USC 7609	400 State Reappointment 410 Antitrust 430 Banks and Banking 450 Commerce/ICC Rates/etc. 460 Deportation 470 Racketeer Influenced and Corrupt Organizations 810 Selective Service 850 Securities/Commodities Exchange 875 Customer Challenge 12 USC 891 Agricultural Acts 892 Economic Stabilization Act 893 Environmental Matters 894 Energy Allocation Act 895 Freedom of Information Act 900 Appeal of Fee Determination Under Equal Access to Justice 950 Constitutionality of State 890 Other Statutory Actions
REAL PROPERTY 210 Land Condemnation 220 Foreclosure 230 Rent Lease & Ejectment 240 Tort to Land 245 Tort Product Liability 290 All Other Real Property	PRISONER PETITIONS 510 Motions to Vacate Sentence Habeas Corpus 530 General 535 Death Penalty 540 Mandamus & Other 550 Civil Rights 555 Prisoner Conditions			

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- ☒ Original Proceeding • 2 Removal from State Court • 3 Remanded from Appellate Court • 4 Reinstated or Reopened • 5 Transferred from another district (specify) • 6 Multidistrict Litigation • 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ To be determined at trial

Check YES only if demanded in complaint:

JURY DEMAND: ☒ YES • NO

VIII. RELATED CASE(S) IF ANY (See Instructions):

JUDGE

DATE

3/7/08

SIGNATURE OF ATTORNEY OF RECORD

::ODMA\PCDOCS\WORDPERFECT\22816\1 January 24, 2000 (3:10pm)

ser 148665 \$350 3/11/08